



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

200904034

Uniform Issue List: 408.03-00

OCT 28 2008

SE: T: EP: RA: T: I

Legend:

Taxpayer A =

Taxpayer B =

IRA 1 =

IRA 2 =

IRA S1 =

IRA S2 =

Date 1 =

Date 2 =

Date 3 =

Financial Institution T =

Financial Institution S =

Amount A =

Amount B =

Amount WH1 =

Amount WH2 =

Dear :

This is in response to a letter dated June 2, 2008, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("the Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayers A and B assert that on Date 1 Taxpayer A authorized a direct transfer of Amount A from IRA 1 to IRA S1, and on Date 1 Taxpayer B authorized a direct transfer of Amount B from IRA 2 to IRA S2. Taxpayers A and B assert that their failure to accomplish a rollover of Amounts WH1 and WH2 was due to financial Institution error in failing to follow the directions of Taxpayers A and B.

Taxpayer A and Taxpayer B file a joint federal income tax return and each maintained their own IRAs, IRA 1 and IRA 2, respectively, at Financial Institution T. On Date 1 Taxpayers A and B in an attempt to accomplish a direct rollover of the entire balance in both IRAs 1 and 2 to new IRAs S1 and S2, respectively, at Financial Institution S, issued a written letter of instruction dated Date 1 to Financial Institution T which authorized a wire transfer of Amount A from IRA 1 and Amount B from IRA 2 to IRA S1 and IRA S2, respectively. On Date 2 contrary to Taxpayers A and B's instructions, Financial Institution T erroneously, and without advance notice to Taxpayers A and B of the opportunity to opt out of withholding, withheld Amounts WH1 and WH2 from IRAs 1 and 2, respectively, for federal income tax purposes and wired the remainder amounts to Financial Institution S, which then deposited the remainder amounts into the appropriate IRAs, IRA S1 and IRA S2.

On Date 3, Taxpayers A and B were notified by their tax return preparer that Amounts WH1 and WH2 were not transferred to IRA S1 and IRA S2 but by then the 60-day period had expired.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement, with respect to the distribution of Amounts WH1 and WH2, contained in section 408(d)(3) of the Code.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayers A and B is consistent with Taxpayer A and B's assertion that their failure to accomplish a rollover of Amounts WH1 and WH2 was due to financial Institution error in failing to follow the directions of Taxpayers A and B.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amounts WH1 and WH2 from IRA 1 and IRA 2. Pursuant to this ruling letter, Taxpayers A and B are granted a period of 60 days measured from the date of the issuance of this letter ruling to make rollover contributions of Amounts WH1 and WH2 to an IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contributions will be considered a rollover contribution within the meaning of Code section 408(d)(3).

Please note that, pursuant to code section 408(d)(3)(E), this ruling letter does not authorize the rollover of the Code section 401(a)(9) minimum required distributions.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions, please contact ( ) by phone at or fax at

Sincerely yours,

  
Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter  
Notice of Intention to Disclose